

196-1142

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE****IN RE THE APPLICATION OF**

Ole Plough

SERIAL NO.: 09/000,008

FILED: January 15, 1998

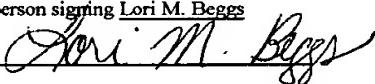
**FOR: AXIAL PISTON MICROPUMP****RECEIVED**

03 FEB 1999

Legal Staff  
International Division

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to "Assistant Commissioner of Patents and Trademarks, Washington, D.C. 20231, Box: PCT" on December 21, 1998.

Name of person signing Lori M. Beggs

Signature **REQUEST FOR RECONSIDERATION OF DECISION ON REQUEST AND NOTIFICATION**

Honorable Commissioner for  
Patents and Trademarks

Box: PCT  
Washington, D.C. 20231

Dear Sir:

A decision dated December 9, 1998 has been received in this application. For convenience, a copy is appended hereto. Reconsideration is requested.

The facts regarding this application, as evidenced by the file and papers filed, are that a declaration was timely filed for this application, but one of the inventors, Jacob Bogh Poulsen, changed his name to Jacob Bogh Schubert. The Patent and Trademark Office then sent, on May 26, 1998, a notification of a defective response, and the undersigned then submitted, on June 11, 1998, a response to that notification.

In the appended decision, the application was considered as abandoned because the inventorship allegedly does not correspond to the inventorship of the International application. The record, however, shows that the inventorship does, indeed, exactly correspond to the inventorship of the International application, but Mr. Poulsen has changed his name to Schubert.

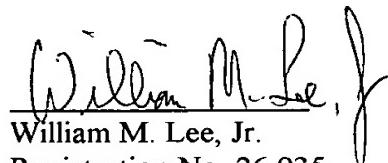
In a review of the Manual of Patent Examining Procedure and the applicable rules, there appears to be no rule or procedure which exactly applies to this rather unique situation, where all inventors sign the declaration and the declaration was timely filed, but one of the inventors changed his name and signed the declaration with his new name. It is therefore requested that the Patent and Trademark Office reconsider the decision, or, consider this paper to be a petition pursuant to 37 C.F.R. §1.182 for a question not specifically provided for or, alternatively, a petition pursuant to C.F.R. §1.183 for suspension of the Rules so that manifest injustice is not rendered by the situation at hand.

Also appended hereto is a revised declaration of Mr. Schubert explaining the fact that his surname was changed due to marriage. As he explains, there is no official document for the name change. Therefore, it is believed that nothing further can be provided to the Patent and Trademark Office other than an original signed such declaration (the document submitted herewith is a copy).

It is requested that the decision, therefore, be reconsidered or this filing be considered as an alternative petition. Any additional petition fee should be deducted from deposit account number 12-0913.

December 21, 1998

Respectfully submitted,

  
\_\_\_\_\_  
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09 DEC 1998



UNITED STATES DEPARTMENT OF COMMERCE  
Patent and Trademark Office

196-1142

Patent Cooperation Treaty  
Legal Office

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R E C E I V E D  
DEC 14 1998

LEE, MANN, SMITH,  
MCWILLIAMS, SWEENEY & OHLSON

In re Application of  
Ploug et al.  
Application No.: 09/000008  
PCT No.: PCT/DK96/00302  
Int. Filing Date: 04 July 1996  
Priority Date: 15 July 1995  
For: AXIAL PISTON MICROPUMP

: DECISION  
: ON REQUEST  
: AND NOTIFICATION

This is a decision on the response filed 15 June 1998 and the communication filed 29 June 1998, which are considered as a petition under 37 CFR 1.181 requesting withdrawal of the NOTIFICATION OF A DEFECTIVE RESPONSE (Form PCT/DO/EO/916) mailed 26 May 1998.

On 15 January 1998, applicants filed a transmittal letter for entry into the national stage in the United States which was accompanied by, inter alia, a \$1070.00 check applied as payment for the basic national fee.

On 16 March 1998, the United States Designated/Elected Office (DO/EO/US) mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that the oath or declaration in compliance with 37 CFR 1.497(a) and (b) and the requisite surcharge payment for furnishing the oath/declaration after 30 months from the priority date were required.

On 26 March 1998, applicants filed a combined declaration and power of attorney and the requisite surcharge payment.

On 26 May 1998, the United States Designated/Elected Office (DO/EO/US) mailed a NOTIFICATION OF A DEFECTIVE RESPONSE (Form PCT/DO/EO/916). A Notification of Defective Oath or Declaration (Form PCT/DO/EO/917) accompanying the Notification (Form PCT/DO/EO/916) further indicated, in effect, that the oath/declaration filed 26 March 1998 was not acceptable since it did not identify the named inventors. In this regard, it was noted that Mr. Poulsen was not identified as a named inventor. The notification (Form PCT/DO/EO/916) set a ONE (1) MONTH time limit for response or the time for response remaining as set forth in the Notification mailed 16 March 1998 , whichever is longer.

The present petition requests, in effect, that the NOTIFICATION OF A DEFECTIVE

RESPONSE (Form PCT/DO/EO/916) mailed 26 May 1998 should be vacated. A copy of a declaration of Mr. Schubert indicates that he changed his name from Jakob Bogh Poulsen to Jakob Bogh Schubert after the filing of the international application. Since the declaration filed 26 March 1998 included the second named inventor Poulsen's former surname crossed out with the alleged new surname Schubert above the signature, it is asserted that the declaration should be accepted and that the notification (Form PCT/DO/EO/916) mailed 26 May 1998 should be vacated.

### DISCUSSION

A review of the international application and the declaration reveals that the inventorship indicated in the declaration does not appear to correspond to the inventorship of the international application. In this regard, Mr. Schubert is not indicated as a named inventor on the international application. As applicant recognizes in each of the 15 and 29 June 1998 submissions, a petition under 37 CFR 1.182 is required for an inventor to change his/her name on an application. See M.P.E.P. 605.04(c). Thus, the notification of a defective response was properly mailed on 26 May 1998. Notwithstanding the requirement for a grantable petition and fee therefore to effect a recording of a change of name of the inventor on the application and applicant's recognition of such a requirement, a review of the application file reveals that applicants did not furnish the requisite petition in response to the notification (Form PCT/DO/EO/916) mailed 26 May 1998.

Therefore, the declaration filed 26 March 1998 is currently not considered as being in compliance with 35 U.S.C. 371(c)(4) and 37 CFR 1.497(a) and (b) in view of the difference in the surname of the second named inventor shown on the declaration with that indicated on the international application. The declaration is not acceptable without a grantable petition under 37 CFR 1.182 as indicated above. Thus, at this time, a proper response to the notifications mailed on 16 March and 26 May 1998 has not been received.

Accordingly, the application is considered **ABANDONED** as of 17 April 1998 for failure to file a timely complete and proper response to the Notification mailed 16 March 1998.

### RECOMMENDATION

Applicant(s) may wish to consider filing a petition to the Commissioner under 37 CFR 1.137(a) or (b) requesting that the application be revived.

### CONCLUSION

For the reasons above, the application is **ABANDONED**.

For the reasons above, the petition under 37 CFR 1.181 is **DISMISSED** without prejudice.

This application is being forwarded to the National Stage Processing Division of the Office of PCT Operations for the preparation and mailing of a Notification of Abandonment (Form PCT/DO/EO/909) indicating, in effect, that the application held to be abandoned for failure to timely file a proper response to the Notification (Form PCT/DO/EO/905) mailed 16 March 1998.

Any further correspondence with respect to this matter should be addressed to the Assistant Commissioner for Patents, Box PCT, Washington, D.C. 20231, with the contents of the letter marked to the attention of the PCT Legal Office.

*P.F.K.*

Peter F. Kratz  
Legal Examiner  
PCT Legal Office

PFK:pfk  
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196-1142

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

IN RE THE APPLICATION OF )  
Ole Ploug et al. )  
SERIAL NO.: 09/000,008 )  
FILED: January 15, 1998 )  
FOR: AXIAL PISTON MICROPUMP )

DECLARATION OF JAKOB BOGH SCHUBERT  
(FORMERLY JAKOB BOGH POULSEN)

Jakob Bogh Schubert declares as follows:

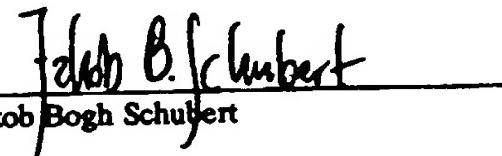
1. He is one of the inventors in the above-identified application which was filed on July 4, 1996 as international application No. PCT/DK96/00302. At the time of filing of the international application, his surname was Poulsen, and his full name was Jakob Bogh Poulsen.
2. Subsequently, his surname was changed to Schubert, and his full name is now Jakob Bogh Schubert. The change of his name was due to his marriage. There is no official document for this name change.

3. As required by the U.S. Patent and Trademark Office, he is signing this declaration with both his former name, Jakob Bogh Poulsen, and his current name, Jakob Bogh Schubert.

4. He further declares that all statements made herein of his own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of this application or any patent issued thereon.

Dated: 24/6-98

  
Jakob Bogh Poulsen

  
Jakob Bogh Schubert